Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

MONEA FAMILY TRUST I, BROOKE MONEA, AND BLAKE MONEA,
Petitioners,

v.

THE UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

In connection with a criminal conviction of the trustee and one beneficiary of an express trust, the District Court ordered a 43 carat diamond to be forfeited. A successor trustee and the innocent beneficiaries of the trust filed a petition under 21 U.S.C. § 853(n), requesting that the District Court amend the order of forfeiture to recognize the diamond as a trust asset. Against this background, the question presented is:

Whether the lower courts, considering the petition of an innocent owner under 21 U.S.C. § 853(n), may demand proof demonstrating how the petitioner became an owner of the asset in question under a clear and convincing evidence standard, instead of proof of simple ownership under a preponderance of the evidence standard.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(B), the following list identifies all the parties appearing here and before the United States Court of Appeals for the Sixth Circuit:

The Petitioners here, and Appellants below, are the Monea Family Trust I, Brooke Monea, and Blake Monea, who filed ancillary petition in a criminal case, seeking the return of their seized property.

The Respondent here and the Appellee below is the United States of America.

RULE 29.6 STATEMENT

The Monea Family Trust I, Brooke Monea and Blake Monea are not corporate entities.

TABLE OF CONTENTS

Question Presented i
Parties to the Proceeding ii
Rule 29.6 Statement ii
Table of Contents iii
Table of Authorities v
Petition for a Writ of Certiorari 1
Opinions Below 1
Statement of Jurisdiction 1
Statutory Provisions Involved 1
Introduction 2
Statement of the Case 4
Reasons for Granting the Petition 7

The Court Should Grant a Writ of Certiorari To Clarify the Standards Applicable to 21 U.S.C. § 853(n) Petitions. 7

Conclusion 15

Appendix:

Appendix A
Sixth Circuit Decision
November 8, 2010 ..... 1a

Appendix B
Sixth Circuit Judgment
November 8, 2010 ..... 20a

Appendix C
Sixth Circuit Order on Rehearing
December 17, 2010 ..... 22a

Appendix D
District Court Decision and Judgment
May 11, 2009 ..... 24a

Appendix E
21 U.S.C.A. § 853 ..... 39a

TABLE OF AUTHORITIES

CASES

Bennis v. Michigan
516 U.S. 442, 452–53 (1996) 7,10, 14

Howard v. Himmelrick
No. 03AP-1034, 2004 WL 1405293
(Ohio Ct. App. June 24, 2004) 12

United States v. Ben-Hur
20 F.3d 313 (7th Cir., 1994) 11

United States v. Marx
844 F.2d 1303 (7thCir., 1988) 11

United States v. Monea Family Trust I
626 F.3d 271 (6th Cir. 2010) 1

United States v. Santoro
866 F.2d 1538 (4th Cir., 1989) 11

STATUTES

21 U.S.C. § 853 ..... *passim*

28 U.S.C. § 1254 1

OTHER AUTHORITIES

Assets Forfeiture Fund, *Total Expenses Paid From Fund by Category of Expense and Recipient Agency*, http://www.justice.gov/jmd/afp/02fundreport/2010affr/report2a.htm 8

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Robert A. Rutland, et al. Editors, 14 *The Papers of James Madison* 266 (1982) 15

Jarrod Shumaker, *Civil Asset Forfeiture: Why Law Enforcement has Changed its Motto From "To Serve and Protect" to "Show Me the Money,"* Justice Policy Journal, Volume 4, No.1, Spring, 2007 9

Maryann R. Williams, Ph.D., et al., *Policing for Profit; the Abuse of Civil Asset Forfeiture,* Institute for Justice, March, 2010 9

PETITION FOR A WRIT OF CERTIORARI

The Monea Family Trust I, Brooke Monea and Blake Monea respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the Sixth Circuit Court of Appeals is reported at *United States v. Monea Family Trust I*, 626 F.3d 271 (6th Cir. 2010) (Appendix A, 1a-19a). The Sixth Circuit did not publish its order on rehearing, but it is reproduced at Appendix C, at pages 22a-23a. The decision of the United States District Court for the Northern District of Ohio was not selected for publication, but it is reproduced at Appendix D, at pages 24a-38a.

STATEMENT OF JURISDICTION

The Sixth Circuit filed its decision on November 8, 2010, and entered an order denying petitioners' motion for a rehearing on December 17, 2010. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the circuit court's decision on a writ of certiorari.

STATUTORY PROVISIONS INVOLVED

21 U.S.C. § 853(i), wherein the "Attorney General is authorized to * * *take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section."

21 U.S.C. § 853(n)(6)(A), wherein the District Court is compelled to determine whether a petitioner:

> has established by a preponderance of the evidence that the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section....

21 U.S.C. § 853(n)(6), wherein the District Court is directed that it "shall amend the order of forfeiture in accordance with its determination" of whether the petitioner met the burden set for the above.

21 U.S.C. § 853(o) which directs the courts that "the provisions of this section shall be liberally construed to effectuate its remedial purposes."

The full text of 21 U.S.C. § 853 is set forth at Appendix E, at 39a-52a.

INTRODUCTION

21 U.S.C. § 853 allows the courts to forfeit property to the Federal government, when that property is used to facilitate a crime. Under the forfeiture statute, the government accedes to the interest of the criminal in the piece of property, and

that interest attaches at the time of the commission of the crime.

If an innocent owner's property is misused by a criminal and as a result, the property gets forfeited to the government, 21 U.S.C. § 853(n) allows the owner to petition the courts to protect the owner's interest in the property. In order to be successful, the innocent owner must demonstrate that the owner's interest in the property is superior to the interest of the criminal under applicable state law. This compels the innocent owner to put on evidence of ownership of the property at the time of the crime.

In the present case, the Monea Family Trust I was the owner of a 43 carat diamond of considerable value. The Trust's ownership of the diamond was demonstrated by documentary evidence which preexisted any criminal acts. The Trust had three beneficiaries; Paul Monea, and his children Brooke and Blake Monea. In 2007, Paul Monea was convicted of conspiring with the Trustee of the Trust, Michael Miller, to sell the Trust's diamond for purported drug money. The diamond was ordered forfeited.

Brooke, Blake, and a successor Trustee filed a petition seeking the return of the diamond, and put on substantial evidence that the diamond was owned by the Trust at the time that Paul Monea and Michael Miller were engaged in malfeasance. But the District Court, and later the Sixth Circuit, required that the Trust prove more than ownership – the courts required that the Trust demonstrate the provenance of the diamond. The Sixth Circuit also required the petitioners to demonstrate their

ownership by clear and convincing evidence, as opposed to a simple preponderance.

Proving how the diamond became an asset of the Trust was an impossible burden in this case due to several circumstances, including the death of a prior trustee. So Brooke and Blake Monea, whom the District Court believed to be unaware of any criminal acts of their father (Appendix at 37a), lost their beneficial interest in the diamond, despite meeting the requirements of 21 U.S.C. § 853(n) by demonstrating the Trust's pre-existing ownership of the diamond under state law.

By adding to and altering the burdens established in 21 U.S.C. § 853(n), the Sixth Circuit has muddied the standards to be applied in forfeiture cases. The Sixth Circuit has also risked expanding the criticism that the federal government is engaging in "policing for profit," where the government's law enforcement decisions are made not with an eye toward promoting justice, but rather with an eye toward funding its own efforts. Finally, this case will provide the Court with an opportunity to clarify and standardize the district courts' obligations in response to petitions filed under 21 U.S.C. § 853(n).

STATEMENT OF THE CASE

In 1999, Deborah Douglass settled the Monea Family Trust I in favor of Paul Monea, Blake Monea, and Brooke Monea as beneficiaries. Douglass was the ex-wife of Paul Monea, and mother of Brooke and Blake. Both Douglass and Paul Monea contributed assets to the Trust. Paul Monea was a successful

owner of an infomercial company, and accumulated a large amount of assets. A substantial amount of those assets were placed into the Trust for the benefit of his family, including a 43.51 carat diamond, an estate formerly owned by the boxer Mike Tyson, and substantial cash assets.

In the summer of 2005, the beneficiaries of the Trust learned that the initial Trustee had been self-dealing with Trust assets. The Trust instituted litigation against the initial Trustee, and a replacement Trustee was appointed. The replacement Trustee unexpectedly died, so Paul Monea approached Michael Miller to become the Trustee of the Trust. Paul Monea did not know that Miller was already the target of a money laundering investigation by the FBI involving a car dealership owned by Miller.

After Miller was appointed Trustee, Miller introduced Paul Monea to undercover FBI agent John Tanza. In May of 2006, Tanza learned that Paul Monea and Miller were in possession of a large diamond, but there was no discussion at that time of a sale of the diamond to Tanza. Over the summer of 2006, documentary evidence demonstrates that Miller, as Trustee, appointed agents of the Trust to transport the diamond, and hired brokers to sell the diamond on behalf of the Trust.

In October of 2006, FBI agent Tanza asked Paul Monea whether the diamond was for sale. During this recorded conversation, Paul Monea told Tanza that he was selling the diamond on behalf of the Trust. As part of the conversation, Miller confirmed to Tanza that he was the Trustee of the

Trust, that the diamond was owned by the Trust and that any money from the sale of the diamond was going to go into the Trust.

Thereafter, Paul Monea, Miller and Tanza negotiated an agreement to sell the diamond to buyers procured by Tanza. The source of the funds to buy the diamond were purported to be drug proceeds. Brooke and Blake Monea had no knowledge that their fellow beneficiary and Trustee were selling the diamond to purported drug dealers. Papers documenting the sale of the diamond were drawn up by the Trust's attorneys, and those papers document the Trust, not Paul Monea, was the seller of the diamond.

The contemplated sale did not take place, and the Government arrested Miller and Paul Monea. The United States brought a criminal complaint against Paul Monea and Miller, alleging that they had engaged in a conspiracy to commit money laundering. Miller accepted a plea agreement. Paul Monea stood trial, and was found guilty of money laundering. The District Court then entered a Preliminary Order of Forfeiture of the diamond in favor of the government. Brooke and Blake Monea, the innocent beneficiaries, and the Trust, through a successor Trustee, filed a petition to establish their interest in the diamond.

The claims of the petitioners were tried to the bench. The evidence before the District Court demonstrated that all of the parties treated the diamond as an asset of the Trust before the diamond became an object of the criminal conspiracy. But the District Court denied the petitions for lack of

evidence regarding how the diamond became a Trust asset. In so doing, the District Court erred by finding that the only way that the diamond could be a Trust asset is by proving the circumstances of the transfer of the diamond to the Trust. (Appendix at 29a). It was not enough to prove ownership – the court imposed a burden to demonstrate how ownership came about.

Brooke, Blake and the Trust appealed to the Sixth Circuit.' The Sixth Circuit supported the District Court, finding that the Trust had to prove how the Trust acquired the diamond, and further requiring that proof by clear and convincing evidence. (Appendix at 13a).

REASONS FOR GRANTING THE PETITION

The Court should grant a Writ of Certiorari to clarify the standards applicable to 21 U.S.C. § 853(n) petitions.

The Petitioners are aware that this Court, in *Bennis v. Michigan*, 516 U.S. 442, 452-53 (1996), found that there was no constitutional violation in the government's forfeiture of an innocent owner's interest in property, so long as notice and hearing rights were afforded to the innocent owner. But in the years since that decision, forfeiture of all types has grown exponentially, and we are now faced with the very real prospect that law enforcement officers are making professional decisions not based upon the net benefit to society, but instead based upon what will maximize the assets that are forfeited to the state. This is a conflict of interest so significant

that implicates issues of fundamental fairness, even if constitutional protections are not invoked.

Between 1985 and 1991 the Justice Department collected more than $1.5 billion in illegal assets.[1] In the next five years the Justice Department almost doubled this intake to $2.7 billion.[2] These rates continue to accelerate: In 2008 *alone*, The Justice Department received $1.3 billion in forfeited assets.[3]

This money is used by the Justice Department for its operations. In fact, the Justice Department has exhorted its attorneys to make every effort to increase forfeiture production in order to bolster the budget of the Justice Department.[4] The Justice Department, in turn, supports FBI operations from its Forfeiture Fund: In 2010, the Justice Department remitted $89,922,000 in forfeiture revenue to the FBI.[5] Forfeiture is such an active field that a cottage industry has developed of consulting companies

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[1] Eric Luminson and Eva Nilsen, *Policing for Profit: Drug War's Hidden Economic Agenda*. University of Chicago Law Review 65 (1998): 35-114, p. 63.

[2] *Id.*

[3] Eric Moores, *Reforming the Civil Asset Forfeiture Reform Act*, 778 Arizona Law Review (2009), Volume 51:777, p. 783-784.

[4] Executive Office for the United States Attorneys, 38 United States Attorneys Bulletin 180 (DOJ 1990)

[5] Assets Forfeiture Fund, *Total Expenses Paid From Fund by Category of Expense and Recipient Agency*, http://www.justice.gov/jmd/afp/02fundreport/2010affr/report2a.htm (last retrieved January 30, 2011).

which assist government officials in seizing and forfeiting assets.[6]

While funding law enforcement is a laudable goal, is it appropriate to do so by seizing the assets of citizens? It has been noted that the goals of our criminal justice system "are compromised when salaries, continued tenure, equipment, modernization, and departmental budgets depend on how much money can be generated by forfeitures."[7] Police agencies should act against crime in proportion to the level of harm to society, but asset forfeiture instead creates an incentive for police agencies to make decisions based upon what assets are available for forfeiture.[8]

With this perverse incentive in place, "[l]aw enforcement agencies might select their targets according to the funding they could provide rather than the threat they pose to the community."[9] And that seems to be exactly what happened in this case.

Paul Monea walked into an existing criminal investigation of Miller when Miller became the Trustee of his family's trust. The FBI was investigating Miller for laundering money through

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[6] Maryann R. Williams, Ph.D., et al., *Policing for Profit; the Abuse of Civil Asset Forfeiture*, Institute for Justice, March, 2010.

[7] Luminson, supra note 1, at p. 56.

[8] Jarrod Shumaker, *Civil Asset Forfeiture: Why Law Enforcement has Changed its Motto From "To Serve and Protect" to "Show Me the Money,"* Justice Policy Journal, Volume 4, No.1, Spring, 2007, p.18; Luminson, supra note 1, at p. 66.

[9] Luminson, supra note 1, at p. 68.

his auto dealership -- something that Paul Monea had no hand in. After learning that the Trust owned a 43 carat diamond, the FBI sought a meeting with Paul Monea and Miller and asked to buy it. After offering many millions of dollars for the diamond over the amounts offered by legitimate buyers, the FBI disclosed to Paul Monea and Miller that the purchase money came from drug sales. Paul Monea and Miller apparently let greed get the better of them, and agreed to the sale.

While these facts were not sufficient to sustain a successful entrapment defense to the criminal charges levied against Paul Monea, from the point of view of the innocent beneficiaries of the Trust, these facts are extremely disturbing. This has every appearance that the government manufactured a crime where one would not otherwise exist, in order to get its hands on a desirable asset.

Justice Thomas, in his concurrence in the *Bennis* case, accurately presaged the current state of affairs when he noted that, if it were improperly used, asset forfeiture could become a "roulette wheel" used to "raise revenue from innocent but hapless owners" or "a tool wielded to punish those who associate with criminals, [rather] than a component of a system of justice." *Bennis* at 456 (J. Thomas, concurring). Justice Thomas also noted that while the Constitution may not protect against this result, the political branches of government bore the responsibility to prevent the "severe problems involved in punishing someone not found to have engaged in wrongdoing of any kind." *Id.* at 456-57 (J. Thomas, concurring).

The political branch of the Federal government spoke on this issue through 21 U.S.C. § 853. Therein, the Justice Department is specifically directed to protect the interests of innocent parties. 21 U.S.C. § 853(i)(1). The District Court is instructed that it "shall" return to innocent parties their property upon a showing made under a preponderance of the evidence standard. 21 U.S.C. § 853(n)(6). And the entire chapter is to be construed liberally to meet its remedial purpose. 21 U.S.C. § 853(o).

Both the District Court and the Sixth Circuit failed to protect the interests of the innocent parties in this case, Brooke and Blake Monea, innocent beneficiaries of a Trust that lost its central asset. An innocent beneficiary of an express trust should not have his or her beneficial interest forfeited due to the Trustee's malfeasance. *United States v. Santoro*, 866 F.2d 1538, 1544 -1545 (4th Cir., 1989), *United States v. Marx*, 844 F.2d 1303, 1306 -1308 (7th Cir., 1988).

21 U.S.C. § 853(n)(6) allows an innocent owner to demonstrate that it has a legal interest, such as ownership, superior to rights of the criminal defendant at the time of the crime. Thus an owner of a chattel would have rights superior to one who simply possessed the chattel. This showing is to be made by a preponderance of the evidence, and state law determines the competing legal interests of the claimants. *United States v. Ben-Hur*, 20 F.3d 313, 317 (7th Cir., 1994).

Despite evidence problems arising from the death of a former Trustee, litigation with another

former Trustee, and the indictment as a co-conspirator of Miller, the successor Trustee found and presented evidence that the Trust owned the diamond, including papers appointing Trust agents to pick up and deliver the diamond and contracts hiring agents to sell the diamond. Further, the government's own evidence revealed that both Miller and Paul Monea described the diamond as a Trust asset in the recorded conversations with FBI agent Tanza.

Under Ohio law, it would seem that the above evidence would be sufficient to prove ownership of the diamond by a preponderance of the evidence. Where personal property is untitled, unrebutted testimony of the owner, even without corroborating documentation, is competent, credible, evidence of ownership. *Howard v. Himmelrick*, No. 03AP-1034, 2004 WL 1405293, ¶13 (Ohio Ct. App. June 24, 2004). Here, both the Trustee and a beneficiary, Paul Monea, were recorded speaking of the diamond as a trust asset, and that evidence was backed with documentary support.

But the District Court required, and the Sixth Circuit supported, that the Trust demonstrate how it became the owner of the diamond. (Appendix at 13a). Instead of applying the preponderance of the evidence standard of 21 U.S.C. § 853(n), the Sixth Circuit required that the Trust prove that it received the diamond as a gift from Paul Monea under a clear and convincing evidence standard. (Appendix at 13a). Ultimately, The Sixth Circuit reasoned that because Paul Monea was involved in the sale of the

diamond, he could not have gifted it to the Trust.[10] (Appendix at 14a).

But there is no requirement under 21 U.S.C. § 853(n) that a petitioner demonstrate the history, pedigree or provenance of a piece of personal property. And there is no support for requiring an innocent beneficiary to prove his or her claim by clear and convincing evidence.

In Judge Helene White's concurrence, she notes a concern with the majority opinion that "bad facts make bad law...." (Appendix at 19a). Judge White expresses concern that the majority focused upon the control that Paul Monea exerted over Trust assets. Judge White noted that it is "common" for a donor to the trust to "exercise a significant degree of control over the assets," and that such control "does not negate the fact that the assets are owned by the trust." (Appendix at 18a).

Although Judge White ultimately concurred in the decision of the majority, her concurrence rightfully points out that both the District Court and the majority of the Sixth Circuit focused upon the wrong factors in deciding this case. And by adopting the trial court's flawed reasoning, the Sixth Circuit has muddied the water concerning the standards applicable to 21 U.S.C. § 853(n) petitions.

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[10] At the same time, the government secured a conviction of Miller based upon his role in the sale of the diamond. He would not have been involved in the sale but for his role as Trustee. So the government treated the diamond as a trust asset to secure Miller's conviction, then treated the diamond as Paul Monea's asset to obtain forfeiture of it.

Practitioners in the Sixth Circuit seeking to prove an innocent beneficiary's interest in a forfeited item of property must now be prepared to prove the pedigree of the item, not simple ownership, under a clear and convincing evidence standard, not a preponderance standard. These are requirements not found in 21 U.S.C. § 853, and imposing additional requirements to a remedial statute intended to work to the benefit of innocent parties demonstrates that the Sixth Circuit has departed from the accepted and usual course of judicial proceedings.

Furthermore, this result is fundamentally unfair. Brooke and Blake Monea had no idea that the Paul Monea and Miller were engaged in criminal activity. The central asset of their Trust was forfeited despite documentary evidence that the Trust was the owner of the diamond months before the diamond became an object of a criminal transaction. The District Court, and worse yet, the Sixth Circuit, applied standards not found in the controlling statute.

In her concurring opinion in *Bennis*, *supra*, Justice Ginsberg noted that Federal involvement in the matter was unnecessary because Michigan's state Supreme Court "stands ready to police exorbitant applications of the statute." *Bennis* at 457. Applying the same reasoning, it is therefore appropriate for this Supreme Court to police an exorbitant application of the parallel Federal statute in the lower Federal Courts.

Financial incentives promoting selective enforcement of laws, such as the customs writ of

assistance, were among the key grievances that triggered the American Revolution.[11] James Madison remarked that "[t]he government is a just government which impartially secures to every man whatever is his own."[12]

We have returned to our roots, and the government is again selectively enforcing the law to grab attractive assets. Instead of curbing this abuse, the lower courts in this case have erected significant barriers to prevent innocent owners from seeking a return of their assets. This Court should intercede and guide the Circuit Courts to apply the standards set forth 21 U.S.C. § 853 in a manner which protects the rights of innocent owners.

CONCLUSION

As a result of the foregoing, the Court should grant a Writ of Certiorari to clarify the standards applicable to 21 U.S.C. § 853(n) petitions.

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[11] Luminson, supra note 1, at p. 75

[12] 14 *The Papers of James Madison* 266. Robert A. Rutland, et al. Editors, 1983

Respectfully submitted,

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February 4, 2011

APPENDIX

APPENDIX

Appendix A
Sixth Circuit Decision
November 8, 2010 ..... 1a

Appendix B
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November 8, 2010 ..... 20a

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December 17, 2010 ..... 22a

Appendix D
District Court Decision and Judgment
May 11, 2009 ..... 24a

Appendix E
21 U.S.C.A. § 853 ..... 39a

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
No. 09-3730

Argued: July 30, 2010
Decided and Filed: November 8, 2010

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MONEA FAMILY TRUST I; BROOKE MONEA; BLAKE MONEA,

Interested Parties-Appellants.

Appeal from the United States District Court
for the Northern District of Ohio at Akron.
No. 07-00030-002—John R. Adams, District Judge.

Argued: July 30, 2010
Decided and Filed: November 8, 2010

Before: GILMAN and WHITE, Circuit Judges; WATSON, District Judge.*

COUNSEL

ARGUED: Thomas R. Houlihan, AMER CUNNINGHAM CO., L.P.A., Akron, Ohio, for Appellants. Herbert J. Villa, ASSISTANT UNITED STATES ATTORNEY, Cleveland, Ohio, for Appellee. ON BRIEF: Thomas R. Houlihan, AMER CUNNINGHAM CO., L.P.A., Akron, Ohio, for Appellants. Herbert J. Villa, ASSISTANT UNITED STATES ATTORNEY, Cleveland, Ohio, Robert E. Bulford, ASSISTANT UNITED STATES ATTORNEY, Akron, Ohio, for Appellee.

GILMAN, J., delivered the opinion of the court, in which WATSON, D. J., joined. WHITE, J. (pp. 13–14), delivered a separate concurring opinion.

*The Honorable Michael H. Watson, United States District Judge for the Southern District of Ohio, sitting by designation.

OPINION

RONALD LEE GILMAN, Circuit Judge.

Paul Monea and a coconspirator were convicted of participating in a money-laundering scheme to hide the proceeds of drug trafficking. The district court subsequently granted a preliminary order of

forfeiture regarding several items of personal property used in the scheme, including a large diamond that purportedly belonged to Monea. Several parties filed petitions to amend the order of forfeiture on the basis of their alleged ownership interest in the diamond, including the Monea Family Trust I–1 999 (the Trust), of which Monea and two of his children were beneficiaries. Holding that the government's interest in the diamond was superior to that of all of the claimants, the district court denied the various petitions.

The Trust now appeals the district court's order. For the following reasons, we AFFIRM the judgment of the district court.

I. BACKGROUND

A. Factual background

The Trust was established in 1999 by Deborah Douglas, who named as beneficiaries her children, Blake and Brook Monea, and her then-husband, Paul Monea (hereinafter referred to as Monea). John Tuggle, a business acquaintance of Monea, was appointed as trustee. Under the terms of the Trust Agreement, the trustee could be removed by Monea or by a majority vote of all of the beneficiaries. Monea also had the singular authority to appoint new trustees. The Trust was initially funded with $1,000, but later acquired ownership of a home near Warren, Ohio that was previously owned by former boxer Mike Tyson.

In 2005, Monea completed a term of imprisonment that he had been serving for an

unrelated tax-evasion conviction. Upon his release, Monea discovered that Tuggle had misappropriated well in excess of $100,000 of Trust funds. This caused Monea to remove Tuggle as the trustee in November 2005.

Tuggle's replacement died unexpectedly soon after being appointed. Monea then asked Michael Miller, an acquaintance of Monea' s who owned a car dealership, to serve as the trustee. During the subsequent months, Miller introduced Monea to John Rizzo, a sales broker for whom Miller was laundering drug money. Unbeknownst to either Miller or Monea, Rizzo was actually an undercover agent with the Federal Bureau of Investigation (FBI).

Monea and Rizzo first met on March 30, 2006 to discuss the possibility of Rizzo supplying cash for some of Monea's business ventures. The two men met again on May 19, 2006 in Los Angeles, California. During this meeting, which Rizzo recorded, Monea mentioned "a diamond that I own," although he did not seek Rizzo's assistance in selling it at the time. The diamond to which Monea referred is a 43.51 Carat Modified Rectangular Brilliant Yellow Diamond Internally Flawless with Fancy Intense Grate known as the "Golden Eye." There is no clear evidence of how Monea first came to possess the diamond, but he told others involved in this case that he owned a diamond mine in Africa and that he received the diamond from a friend.

Prior to being imprisoned for tax evasion, Monea had borrowed $500,000 from a man named Michael Dillard, who owned a pawn shop in Oklahoma.

Monea used the money to pay taxes that he had owed. He left the diamond in Dillard's possession as collateral for the loan. Around the time that Monea first met Rizzo, he borrowed another $500,000 from an acquaintance named Gerald Deleo to pay off the Dillard loan and reacquire the diamond. Deleo also gave Monea an additional $30,000 shortly thereafter to have the diamond readied for sale by gemologists in New York. Monea led Deleo to believe that the latter would receive an ownership interest in the diamond in exchange for the monies advanced. Deleo had the diamond in his possession for two to three weeks sometime after it was readied for sale, during which time Deleo unsuccessfully searched for a potential buyer.

In June 2006, Miller, in his capacity as trustee, appointed an acquaintance named David Ramsey as an agent of the Trust for the limited purpose of retrieving the diamond from a jeweler in Oklahoma who was holding the diamond on behalf of Dillard. This arrangement was made, according to Miller, so that the "paper trail" showed "that the trust bought the stone for $500,000." Monea and Rizzo spoke shortly after Ramsey retrieved the diamond, but Monea again did not ask Rizzo for help in finding a buyer for the gemstone.

In August and September 2006, Monea and Ramsey engaged in discussions with representatives from the Charity Fellowship of Truth Church, located in Avon, New York, regarding the purchase of a lake house in Massillon, Ohio. Monea had rented the house in the past and had used it to host business associates while negotiating contracts and discussing his various entrepreneurial ventures.

But by August 2006, the home was in danger of going into foreclosure. Pursuant to the purchase agreement, the church would buy the lake house from its current owners for approximately $2.5 million. The Trust then agreed to purchase the home from the church for $3 million within one year thereafter.

To secure the Trust's obligation to ultimately buy the home, the church was to receive a 50 percent interest in the diamond, as memorialized in a separate "Certificate of Giving" signed on the same day as the purchase agreement. According to the purchase agreement, the diamond would be sold, with the proceeds from the sale to first be used to buy the lake house from the church for $3 million. The remaining balance from the sale of the diamond would belong to the Trust.

Church representatives present during these discussions testified that Monea and Ramsey conveyed the impression that the diamond belonged to the Trust and that Ramsey was acting as the Trust's agent. They further stated that Miller was present at a Canton, Ohio country club where both the purchase agreement and the Certificate of Giving were signed in September 2006. Miller acknowledged meeting the church representatives at his home earlier on the day in question. Although Miller never testified as to whether he was present at the country club when the documents were signed, he denied participating in any negotiations between the church and Monea and maintained that he was never informed of any agreement reached by the two parties. Moreover, Miller said that he had not authorized Ramsey to act on behalf of the Trust

beyond retrieving the diamond from Dillard's jeweler in Oklahoma. Ramsey, however, signed both documents on behalf of the Trust, and Monea signed the purchase agreement as an "acting Trustee" for the Charity Fellowship of Truth Church.

Following these negotiations, Monea, Ramsey, and Reverend David Moore from the church took the diamond to Los Angeles and Las Vegas to show to potential buyers. During part of this time, Reverend Moore had the diamond in his possession without either Monea or Ramsey being present. Miller was never informed that these showings were taking place or that Reverend Moore at times had sole custody of the diamond.

That fall, Miller and Monea continued their efforts to sell the diamond, with Miller hiring at least two different brokers in October 2006 to assist them in finding a buyer. Miller and Monea met with Rizzo again on October 17, 2006. This time their discussion, which Rizzo recorded, revolved around Rizzo finding a buyer to purchase the diamond for $15 million. During their conversation, Monea maintained that he was "just trying to sell on behalf of the trust an asset that the trust has." Miller added that any money from the sale was "going in the trust."

In early November 2006, Monea and Rizzo reached an agreement in which Monea agreed to sell the diamond to drug dealers who Rizzo knew in exchange for $19.5 million and a boat. Discussions regarding commissions, the payment of earnest money, and the wiring of funds continued through mid-December. Monea typically handled these

negotiations, with little meaningful involvement from Miller, and he met with Rizzo on one occasion in Las Vegas without Miller being present. On another occasion in November 2006, when Monea believed that he was nearing the close of a deal, he told a potential buyer that "I think I got my diamond sold."

Monea also gave Miller a list detailing how the proceeds of the sale were to be disbursed. A majority of the payments to be made were unrelated to either the debts or investments of the Trust, and several payments were to be used to discharge personal debts incurred by Monea.

On December 13, 2006, Monea, Miller, and Rizzo met at the office of the Trust's lawyer, Jack Morrison, to complete the sale of the diamond. Morrison had prepared several documents to complete the transaction, including a bill of sale, an acknowledgment and receipt, and a tax return, all of which indicated that the Trust owned the diamond. At the close of the meeting, Miller and Monea were arrested by the FBI.

B. Procedural background

A grand jury charged Monea with one count of conspiracy to launder money, in violation of 18 U.S.C. §1956(h), and three counts of money laundering, in violation of 18 U.S.C. §1956(a). Miller was charged with one count of conspiracy to launder money and 36 counts of money laundering. The superseding indictment also sought forfeiture of several pieces of personal property and real estate

used in the money-laundering scheme, including the diamond.

Following a jury trial, Monea was convicted on all four counts and was sentenced to 150 months' imprisonment. The jury also found that the diamond was involved in the four counts with which Monea was charged. For his part in the scheme, Miller pled guilty pursuant to a plea agreement and was sentenced to 57 months' imprisonment.

In June 2007, the district court entered a preliminary order of forfeiture that authorized the government to seize various properties used in the money-laundering scheme, including the diamond. Several parties, including the Charity Fellowship of Truth Church, Deleo, and the Trust, filed petitions seeking to establish ownership of the diamond. After the court denied the government's motion to dismiss all but one of the petitions, it held a three-day forfeiture hearing in October 2007.

During the hearing, several witnesses testified that the diamond was a Trust asset. Miller, as well as the current trustee, Nancy McCann, both testified that the Trust owned the diamond. Blake Monea similarly testified that he had always understood that the diamond belonged to the Trust. None of these witnesses, however, were able to identify any document that established the Trust's ownership of the diamond. Furthermore, both Miller and Blake Monea testified that they arrived at their conclusions regarding the Trust's ownership based solely on representations made by Paul Monea.

Other evidence introduced at the hearing indicated that the Trust did not own the diamond. Tuggle testified that the diamond never became a trust asset while he was serving as trustee. John Tanza, the undercover agent posing as Rizzo, likewise testified that when he first discussed finding a buyer for the diamond, Monea stated that the diamond was his. Also undercutting the Trust's claim of ownership was an affidavit of Paul A. Monea (one of Monea's sons) that was filed in a bankruptcy case involving the son's business. In the affidavit, Paul A. Monea stated that "[t]o the best of my knowledge the diamond was and is owned by Paul M. Monea, my father, in his individual capacity."

The legitimacy of the Trust was also called into doubt at the hearing. Tuggle, for example, conceded that when he was trustee, Monea had him "step and fetch and do whatever [Monea] said." The Trust, Tuggle further admitted, was in reality Monea's "private slush fund[]." Tanza similarly testified that, based on his conversations with Monea and Miller, "the reason for the trust was to protect the assets of Mr. Monea from any type of attack from either legal or civil actions."

As for Miller, in describing his role as trustee, he stated that he was not involved in the negotiations with brokers to sell the diamond and would simply sign whatever broker agreements that Monea presented. Miller also testified that Monea directed him to sign a document designating Ramsey as an agent of the Trust for the purpose of picking up the diamond from Dillard's jeweler in Oklahoma. He further recalled that he "never had the diamond in

my possession, ever"; instead, Monea usually carried the diamond in a velvet bag in his pants pocket, although Ramsey would "sometimes" carry it in his pocket.

Following the hearing, the district court denied all of the petitions seeking ownership of the diamond. Specifically, the court found that the government's interest in the diamond vested on March 30, 2006, the date on which Monea first spoke with Rizzo, because that was when the conspiracy first began. The court further concluded that Monea never "surrendered ownership and control of the diamond" to the Trust and that he "always treated the diamond as his own, despite his representations that it was an asset of the estate." Moreover, the court questioned the validity of the Trust. Although the court declined to make a formal ruling, it noted that "there is strong evidence that the Trust itself was a sham." Finally, the court held that none of the other claimants had established an interest in the diamond superior to that of the government's. This timely appeal of the district court's order, brought by the Trust only, followed.

II. ANALYSIS

A. Standard of review

We review de novo a district court's interpretation of federal forfeiture law. *United States v. Jones*, 502 F.3d 388, 391 (6th Cir. 2007). Although findings of fact are reviewed under the clear-error standard, "[t]he issue of whether those facts are sufficient to constitute a proper criminal forfeiture is reviewed de novo." *Id.*

B. The Trust's interest in the diamond

Pursuant to 21 U.S.C. § 853(n)(6), a district court can amend an order of forfeiture in only two circumstances. The first of these circumstances is where "the petitioner has a legal right, title, or interest in the property" that "was vested in the petitioner . . . or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property." *Id.* § 853(n)(6)(A). Amending an order of forfeiture is also appropriate where "the petitioner is a bona fide purchaser for value of the right, title, or interest of the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under such section." *Id.* § 853(n)(6)(B).

To succeed on a petition to amend a forfeiture order, a claimant must establish ownership by a preponderance of evidence. *Id.* § 853(n)(6). The Trust does not argue that it was a bona fide purchaser of the diamond, so we need address only whether the Trust had a vested interest in the diamond when the acts giving rise to the money-laundering conspiracy occurred. Both parties agree that Ohio law governs. We must therefore determine (1) whether the Trust had a legal right, title, or interest in the diamond, and (2) if so, whether that right, title, or interest vested prior to the government obtaining its interest.

Turning to the first issue, we note that there is no dispute that the first person to possess the diamond among all of the interested parties was Monea. There is also no evidence of any document granting

the Trust an ownership interest in the diamond. In light of these facts, the district court limited its analysis to whether Monea had gifted the diamond to the Trust, thereby implying that this was the only remaining method that could have resulted in the transfer of ownership from Monea to the Trust. Neither side has indicated that any other method of transfer occurred.

Two conditions must be met under Ohio law for a gift to be made. First, there must be "an intention on the part of the donor to transfer the title and right of possession of the particular property to the donee." *Bolles v. Toledo Trust Co.*, 4 N.E.2d 917, 920 (Ohio 1936). Second, there must be "a delivery by the donor to the donee of the subject- matter of the gift to the extent practicable or possible considering its nature, with relinquishment of ownership, dominion, and control over it." *Id.* Each of these conditions must be supported by clear and convincing evidence. *Id.* Because this standard is higher than that for establishing an ownership interest under 21 U.S.C. §853(n)(6), a finding that Monea gifted the diamond to the Trust would necessarily result in a finding that the Trust has an ownership interest in the diamond.

Regarding the question of donative intent, the district court concluded that, "[a]t best, . . . Monea's repeated assertions that the diamond was an asset of the Trust" evidenced his intent to make a gift to the Trust. Neither party has challenged the court's ruling in this regard.

We therefore turn our attention to the second element – whether Monea delivered the diamond to

the Trust by relinquishing ownership, dominion, and control over it. The Trust contends that such delivery took place when Ramsey picked up the diamond from the jeweler in Oklahoma because Ramsey was acting as an agent of the Trust at that time. Once Ramsey retrieved the diamond, however, he never gave it to the Trust. Rather, Monea permitted Deleo to have the diamond for two to three weeks while shopping it to potential buyers. There is no evidence that the Trust approved or was ever aware of this arrangement.

Upon repossessing the diamond, Monea typically carried it in his pants pocket, with Ramsey "sometimes" doing the same. On the other hand, Miller, then serving as the trustee, never had the diamond in his possession and had no input "on where the diamond would go and where it would be." The fact that Monea and Ramsey never surrendered possession of the diamond to the trustee weighs strongly against a finding of delivery to the Trust. *See LCP Holding Co. v. Taylor*, 817 N.E.2d 439, 445 (Ohio Ct. App. 2004) (holding that "delivery occurred when appellee surrendered possession of the stock and endorsed the stock to his children as owners").

In addition to not surrendering possession of the diamond, Monea continued to keep it for his personal use. He promised Deleo an interest in the diamond in exchange for money to pay off Monea's debt to Dillard and to have the diamond readied for sale. Soon thereafter, Monea and Ramsey entered into a Certificate of Giving with Charity Fellowship of Truth Church that granted the church a 50 percent security interest in the diamond. Although Ramsey stated in the Certificate that he was acting on behalf

of the Trust, Miller denied any knowledge of the church obtaining an interest in the diamond or that Monea and Ramsey were even participating in such negotiations. Miller was also never informed that Monea, Ramsey, and Reverend Moore were showing the diamond to potential buyers in Los Angeles and Las Vegas or that Reverend Moore at times had sole custody of the diamond.

The Trust defends these actions by claiming that both Monea and Ramsey were acting as agents of the Trust, but we find this argument unpersuasive. There is no evidence in the record that the Trust ever appointed Monea to be an agent or entrusted him with the diamond in any other capacity. In fact, the only evidence that Monea was negotiating on behalf of any party is when he signed the purchase agreement as a trustee of the church. And although documentation exists appointing Ramsey as an agent of the Trust, it specifically limited his authority to "the purpose of delivering $500,000 (Five Hundred Thousand Dollars) payment to Mike Dillard and the receipt of any material at the time of payment." Monea and Ramsey then proceeded to engage in negotiations to sell the diamond not only without the Trust's knowledge, but also well beyond any scope of agency that either potentially had with the Trust.

The evidence also shows that the primary beneficiary of these negotiations was to be Monea himself rather than the Trust. Monea sought ownership of the Massillon lake house so that he could continue to entertain business clients at the residence, and the majority of the proceeds from the planned December 2006 sale of the diamond was

earmarked for Monea's personal debts and investments. He even referred to the gemstone as "my diamond" on at least one occasion during conversations with potential buyers. And because Monea continued to use the diamond for his own purposes and did not surrender possession of it, delivery of the diamond to the Trust never occurred.

The Trust nevertheless contends that testimony from the forfeiture hearing regarding its ownership of the diamond was unrebutted and therefore conclusively establishes that the diamond was a Trust asset. To support this assertion, the Trust relies upon *Howard v. Himmelrick*, No. 03AP-1034, 2004 WL 1405293 (Ohio Ct. App. June 24, 2004). In Howard, the fiancée of a recently deceased man sued to recover possession of several pieces of personal property located in the man's home when he died, but which she claimed were hers. Following a hearing, the trial court determined that the property belonged to the fiancée. The man's children, who had refused to surrender possession of the items, argued on appeal that this ruling was against the manifest weight of the evidence. Although the only evidence that the fiancée had retained ownership of the property was her own testimony, there was no other evidence refuting her statements. The Ohio Court of Appeals held that such unrebutted testimony was "competent and credible evidence" of ownership and, accordingly, that the trial court's ruling was not against the manifest weight of the evidence. *Id.* at *3.

But the Trust misreads Howard. In that case, the deceased's children challenged the trial court's determination that the disputed personal property

belonged to the fiancée. The Ohio Court of Appeals rejected the children's argument in light of the fiancée's testimony that she had not given the items to the deceased and the lack of any evidence to the contrary. *Howard*, 2004 WL 1405293, at *3.

In contrast, there is significant evidence in the present case supporting the conclusion that Monea never made a gift of the diamond to the Trust. Howard is therefore distinguishable. In sum, the Trust has not shown by clear and convincing evidence that Monea ever relinquished ownership, dominion, and control over the diamond. *See Bolles v. Toledo Trust Co.*, 4 N.E. 2d 917, 920 (Ohio 1936). The district court thus did not err in finding that no gift had been made. We therefore have no need to address the Trust's claim that its interest in the diamond vested prior to the government's forfeiture claim.

III. CONCLUSION

For all of the reasons set forth above, we AFFIRM the judgment of the district court.

CONCURRENCE

HELEN N. WHITE, Circuit Judge (concurring).

I write separately to make clear that my concurrence is based on the deference owed to the district court as finder of fact, and on the unique facts of the case. I do not regard Monea's retention

of considerable control over the diamond and the trustee as invalidating an intended gift to the trust, if such a gift was in fact intended.

The trust at issue here was a family trust, created by Monea's ex-wife for Monea and their children. The ex-wife did not fund the trust, except in an insignificant amount. Apparently, the parties contemplated that Monea would do so if he chose. In such situations, it is common for the co-beneficiary/parent/donor to give assets to the trust and simultaneously exercise a significant degree of control over the assets. It is also common for settlors of trusts, or beneficiaries granted the power, to name trustees over whom they have considerable control. Although this degree of control may possibly have tax consequences, it does not negate the fact that the assets are owned by the trust.

Under the circumstances here, I do not think it was necessary for Monea to do more than declare the diamond to be a trust asset and so inform the trustee. It has been said that bad facts make bad law, and I am concerned that we not do so here. Had Monea not been involved in money laundering, but had remarried and left the residuary of his estate to his second wife, I doubt that we would hold that his retained control of the management of the diamond rendered it an asset of his estate, belonging to his second wife, rather than an asset of the trust, belonging to his children.

Notwithstanding these observations, however, I concur in the affirmance because I believe that there were circumstances from which the district court could have concluded that Monea's retained control

and other conduct reflected that he intended that the diamond be an asset of the trust in name only, and did not intend to transfer true ownership to the trust. Although the district court's analysis proceeded along a different path, I understand this to be the import of the district court's observation that "While Monea consistently shopped the diamond to buyers and investors, there is no evidence that he did so with authority from the Trustee. Rather, the evidence indicates that Monea always treated the diamond as his own, despite his representations that it was an asset of the estate." On this basis, I concur.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
No. 09-3730

Filed:
November 8, 2010

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MONEA FAMILY TRUST I; BROOKE MONEA; BLAKE MONEA,

Interested Parties-Appellants.

Before: GILMAN and WHITE, Circuit Judges; WATSON, District Judge.

JUDGMENT
On Appeal from the United States District Court
for the Northern District of Ohio at Akron.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION WHEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT
/s/ Leonard Green, Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
No. 09-3730

UNITED STATES OF AMERICA,	)
Plaintiff-Appellee,	)
v.	)
MONEA FAMILY TRUST I; BROOKE MONEA; BLAKE MONEA,	)
Interested Parties-Appellants.	)

BEFORE: GILMAN and WHITE, Circuit Judges; and WATSON, U.S. District Judge;

Upon consideration of the petition for rehearing filed by the appellants,

It is ORDERED that the petition for rehearing be, and it hereby is, DENIED.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green, Clerk

Issued: December 17, 2010

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
CASE NO. 5:07CR30

UNITED STATES OF AMERICA,

Plaintiff

v.

PAUL MONEA,

Defendant

This matter appears before the Court on numerous petitions filed by the parties that claim an interest in a diamond that is the subject of this Court's preliminary order of forfeiture. Petitioners Brooke and Blake Monea and the Monea Family Trust I (collectively "the Trust") claim an interest in the diamond. In addition, Petitioners Reverend David Moore, Charity Fellowship of Truth Church, Jeri Coppa-Knudson, Gerald K. Deleo, and Corona Clay Company claim an interest in the diamond. In response, the Government contends that its interest in the diamond is superior to any interest claimed by Petitioners.

I. Background

On December 12, 2006, a criminal complaint was filed against Paul Monea and Michael D. Miller. The complaint resulted in an indictment being issued on January 9, 2007. In the indictment, Monea was charged with conspiracy to commit money laundering and money laundering. As a part of its case, the Government put on evidence that Monea offered to sell a 43.5 carat diamond to a drug dealer as a part of the money laundering scheme. Based upon that evidence, the jury was asked to return a special verdict regarding whether the diamond had been used in the conspiracy. On May 23, 2007, the jury returned its verdict, finding that the "43.51 Carat Modified Rectangular Brilliant Yellow Diamond Internally Flawless with Fancy Intense Grate, known as the 'Golden Eye'" was involved in the conspiracy. Based upon that finding, the Court issued its preliminary order of forfeiture on June 26, 2007.

Following this Court's issuance of the preliminary order of forfeiture, a wide array of individuals and entities filed petitions claiming an interest in the diamond. The Monea Family Trust I, Brooke Monea, and Blake Monea filed their petitions on July 27, 2007. In those petitions, the Trust asserts that it was the true owner of the diamond and that no trustee had ever authorized the sale of the diamond. Kenneth and Linda Lanci filed their petition on August 3, 2007. The Lancis' petition was voluntarily dismissed and therefore was not considered in the issuance of this order. On August 6, 2007, Reverend David Moore and the Charity Fellowship of Truth Church filed their petition.

Moore and the Church claim an ownership interest in the diamond through an agreement made with the Trust. Additionally, Moore claims an interest under a theory of quantum meruit based on his work promoting the diamond and increasing its value. Gerald K. Deleo and his company, Corona Clay Company, filed their initial petitions on August 8, 2007. In those petitions, Deleo claims he became owner of the diamond when he wired $500,000 to a man named Michael Dillard to get the diamond "out of hock." On August 10, 2007, Jeri Coppa-Knudson filed her petition as a bankruptcy trustee. However, neither counsel, nor Coppa-Knudson appeared before this Court during the final forfeiture hearing.

After numerous filings and preliminary hearings, the Court scheduled a final evidentiary hearing in this matter for October 20, 2008. The hearing was held October 20 through October 22, 2008. The parties were then permitted to file post-hearing briefs, and the Government was permitted to respond to those briefs. Accordingly, the briefing in this matter came to a close on January 23, 2009. The Court now resolves each of the outstanding petitions.

II. Legal Standard

21 U.S.C. §853(n)(6) governs these proceedings and provides as follows:

> If ... the court determines that the petitioner has established by a preponderance of the evidence that –

> (A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section ...
>
> the court shall amend the order of forfeiture in accordance with its determination.

Each petitioner has the burden of proof on its claim of legal right, title, or interest. *Id.*; *Pacheco v. Serendensky*, 393 F.3d 348, 351 (2d Cir. 2004). Furthermore, under §853(c), the Government's interest in the property described in §853(a) vests when the defendant commits the act giving rise to forfeiture; this timing provision is often called relation back. *United States v. O'Dell*, 247 F.3d 655, 685 (6th Cir. 2001); *United States v. Timley*, 507 F.3d 1125, 1130 (8th Cir. 2007) (holding that "[u]nder the relation-back doctrine, title to the forfeited property vests in the United States at the time of the defendant's criminal act").

III. Analysis

A. The Government's Interest

As indicated above, the title to the diamond vests in the Government at the time the defendant committed the act giving rise to the forfeiture. Under this theory, the Government asserts that its

interest vested on the day the conspiracy began on March 30, 2006. The Court agrees.

"[T]he government takes the forfeited property that was in the hands of the defendant at the time of the offense, not at the time of conviction." *O'Dell*, 247 F.3d at 685. Each of the petitioners contend that the Government's interest did not vest until Monea used the diamond as a part of his money laundering scheme. However, as the conspiracy that resulted in forfeiture of the diamond began on March 30, 2006, the Government's interest is deemed to have vested on that date. *See U.S. v. McClung*, 6 F.Supp.2d 548, 552 (W.D.Va. 1998) ("Because the drug conspiracy Mrs. McClung was convicted of began in 1981, the government is deemed by the statute to have acquired legal title that same year to the forfeited property described in COUNT VII."); see also, *U.S. v. Lavin*, 942 F.2d 177, 179 n.1 (3d Cir. 1991). Moreover, the Court notes that based upon the analysis below, even if the Government's interest did not vest until October 17, 2006, the Court would still find the Government's interest to be superior to any interest of the petitioners.

B. The Trust's Interest

The Trust contends that it has an interest in the entirety of the diamond because it was a trust asset and was never properly transferred out of the trust. The Court disagrees.

As detailed above, the Trust bears the burden of demonstrating its interest in the diamond. The evidence presented to this Court does not establish that the Trust has a valid interest in the diamond.

In order to make a gift of the diamond to the Trust, Paul Monea was required to intend make a gift of the diamond, deliver the diamond to the Trust, and relinquish "ownership, dominion, and control over it." *Bolles v. Toledo Trust Co.*, 132 Ohio St. 21, paragraph one of the syllabus (Ohio 1936). The Trust has failed to establish that Paul Monea ever made a gift of the diamond to the Trust.

At best, the Trust established that Monea intended to make a gift. This fact was established by Monea's repeated assertions that the diamond was an asset of the Trust. From those statements, the Court may infer that Monea intended to make a gift to the Trust.

There is scant evidence in the record that Monea ever delivered the diamond to the trustee. In this regard, the Trust asserts that delivery was completed when an agent of the acting trustee retrieved the diamond from a man named Michael Dillard. While the Trust presented evidence that the agent, Scott Ramsey, had been properly appointed an agent of the Trust, there is no indication that Ramsey actually retrieved the diamond for delivery to the Trust. Instead, after retrieving the diamond, Ramsey accompanied Monea with the diamond to see Deleo. At that time, Monea continued to use the diamond for his own personal purposes. For example, he was able to use the diamond to persuade Deleo to loan him large sums of money. Accordingly, Monea's actions do not indicate that he intended to deliver the diamond to the Trust when Ramsey retrieved it.

Finally, even assuming that Ramsey's retrieval of the diamond constituted delivery would not salvage the Trust's claim to the diamond. The record is replete with examples of Monea using the diamond for his own purposes. Completely lacking from the record is any evidence that Monea ever surrendered ownership and control of the diamond. While Monea consistently shopped the diamond to buyers and investors, there is no evidence that he did so with authority from the Trustee. Rather, the evidence indicates that Monea always treated the diamond as his own, despite his representations that it was an asset of the estate. The Trust, therefore, cannot establish each of the elements of an inter vivos gift and thus cannot demonstrate that the diamond ever became an asset of the Trust.

As the diamond never became an asset of the Trust, Brooke and Blake Monea, as beneficiaries of the Trust, have no claim to the diamond. The petitions of the Trust, Brooke Monea, and Blake Monea are denied.

Finally, with respect to the Trust, the Court notes that there is strong evidence that the Trust itself was a sham. Each of the trustees that testified indicated that they made no decisions regarding the Trust's assets. Instead, checks were written and assets were depleted at the sole discretion of Paul Monea. As the Court has found that the diamond was not an asset of the Trust, however, it declines to make a formal ruling that the Trust was a sham.

C. The Church's Interest

The Church claims that its interest in the diamond vested on September 2, 2006, pursuant to two separate documents. The Church contends that a written agreement and a "Certificate of Gifting" demonstrate its interest in the diamond. The Court disagrees.

The documents relied up on by the Church were signed by "David Scott Ramsey, Agent" and "David Scott Ramsey, for the Monea Family Trust." As detailed above, the Trust has no legal interest in the diamond. Accordingly, Ramsey had no ability to transfer any interest in the diamond to the Church. To avoid this result, the Church asserts that the Trust was Paul Monea's alter ego. It is entirely unclear how this argument furthers the Church's claim. If the Trust was a sham trust, Ramsey would have no legal authority to act as its agent, as the Trust would have no legal authority to perform any actions. If that were true, the ownership of the diamond would have always remained with Paul Monea. More specifically, the Trust would be unable to act on behalf of Monea as it would be a legal nullity.

Based upon the above, the Church has two documents signed by an agent of an entity that did not own the diamond. Those documents, therefore, cannot be used to create an interest in the diamond. Furthermore, there is nothing to suggest that Ramsey was acting as an agent of Paul Monea when he signed the documents. Rather, all of the evidence in the record indicates that Ramsey was an agent for the Trust, and only for the Trust. Finally, the Court

finds that it would be particularly odd for Paul Monea to have Ramsey sign on his behalf as an agent while Monea himself was present when the documents were signed. Such an act strains logic.

Furthermore, to the extent that the Church claims that these events indicate Monea's intent to gift the diamond, the Court disagrees. If anything at all, these events indicate Monea's intent to defraud yet one more entity by using the diamond. To that extent, it makes logical sense that Monea used the Trust, an entity with no interest in the diamond, as the signatory on the documents.

Moreover, the Court questions the legal effect of the evidence proffered by the Church. In the Agreement (Church Ex. 7), the Trust allegedly granted "to the Fellowship a 50% security interest in the gem (as per a separate Certificate of Gifting)[.]" However, rather than granting a security interest, the Certificate of Gifting (Church Ex. 8) purports to "grant to the Charity Fellowship Church of Truth, as a gift freely given with no consideration in return save for the faithful adherence to those shared ideals and goals, a 50% or one-half interest in ... a 43.5 carat intense fancy yellow diamond[.]" Thus, while one document purports to give the Church nothing more than a security interest for performing certain duties, another document signed the same day purports to outright gift half of the diamond to the Church. These inherent contradictions in the evidence cause the Court to significantly question the reliability of such evidence.

However, as with determining whether the Trust was a sham, the Court has no need to determine the

legal implications of the conflicting nature of the documents. The documents themselves do not transfer the diamond, so the Court need not interpret them.

Finally, to the extent that the Church requests that the Court impose a constructive trust on 50% of the diamond, the imposition of such a trust would be a vain act. As the Government properly notes, the creation of such a trust would occur on the date of this order. *See, e.g., U.S. v. BCCI Holdings*, 46 F.3d 1185, 1190-91 (C.A.D.C. 1995). As a result, the Government's interest would clearly be superior to any interest created by the constructive trust. The Court, therefore, declines to create a constructive trust. The Church's petition is denied.

D. Reverend Moore's Interest

Reverend Moore claims an interest in the diamond pursuant to a theory of quantum meruit. Moore claims that he created a back-story for the diamond and built up interest in the diamond, thereby increasing its value. Moore claims he should be compensated for this work by receiving an interest in the diamond. Moore's claim fails for several reasons.

First, Moore was unable to present any evidence as to the increase in value of the diamond that could be attributed to his efforts. As such, he was unable to demonstrate the elements of a quantum meruit claim.

Assuming arguendo that Moore increased the value of the diamond does not assist him in his

claim. To be successful under section 853, a petitioner must demonstrate a legal right or interest in the property subject to forfeiture. Moore, however, pursue s an equitable interest in the diamond. To the extent that Moore seeks to establish such an interest, his claim fails for the same reason the Church's request for a constructive trust fails. Moore's equitable interest would be recognized for the first time by this Court on the day it entered an order. The Government's interest, therefore, would be superior to any interest the Court established in favor of Moore.

In his presentation to this Court, Moore attempted to analogize his actions to that of a painter. Moore opined that a homeowner could not decline to pay a house painter that had performed his work simply because the painter was not properly licensed. Moore is correct that the painter would likely be entitled to quantum meruit recovery for the work he performed and the legal interest in the home that he had painted. Instead, more would be required to obtain such an interest, such as perfecting a lien. Moore took no action based on his quantum meruit theory to obtain an interest in the diamond. If Moore had taken action to perfect such an interest, then this Court would have a date to measure Moore's interest against that of the Government. That event, however, did not occur. Accordingly, Moore's petition is denied.

E. Deleo's Interest

Like the Petitioners discussed above, Deleo is unable to establish an interest in the diamond. Deleo's petition, therefore, is denied.

Deleo met with Monea at a time when the diamond was being held by a pawnshop in Oklahoma City because of a debt Monea had failed to repay. Eventually, Monea convinced Deleo to loan him $500,000 to get the diamond out of hock. In return, Deleo would receive his money back and an additional $1,000,000 from the sale of the diamond. Deleo performed his end of the bargain by wiring $ 500,000 to the appropriate person, Michael Dillard, on June 12, 2006. It is from these facts that Deleo claims to have an interest superior to that of the Government. The Court cannot agree.

Unfortunately for Deleo, the record indicates that Deleo never expected an interest in the diamond in return for his payment. Instead, Deleo expected a sizeable return on his investment, i.e., proceeds from a possible sale of the diamond. Deleo also thought his payment would gain him a partnership with Monea in a diamond mine in South Africa, the music industry, the professional fighting industry, and the infomercial industry. Furthermore, when questioned, Deleo was unable to quantify his interest in the diamond. Specifically, Deleo admitted that the amount of money he was promised when the diamond was sold was changed on several occasions above.

Deleo's testimony undermines any assertion that his payment of the $500,000 resulted in him becoming the owner of the diamond. Deleo was quite clear in his testimony that he did not believe he was purchasing the diamond. Rather, he believed he would be partnering with Monea on numerous ventures and receiving a designated amount of money upon sale of the diamond. There is no

evidence of any kind to suggest that Deleo was purchasing the diamond out of hock. Rather, his intent was to secure the diamond on behalf of Monea and to receive something in exchange for his actions. The Court, therefore, rejects Deleo's contentions that he purchased the diamond on his own behalf.

Rather than find Deleo to be an owner of the diamond, the Court finds that Deleo is an unsecured creditor. Deleo loaned money to Monea to retrieve the diamond. This fact is indisputable from Deleo's testimony. In exchange, Monea agreed to pay Deleo a significant sum when the diamond was sold. These facts demonstrate a loan from Deleo to Monea and nothing more. As an unsecured creditor, Deleo has no specific interest in the diamond and his petition must fail.

Finally, the Court notes that any claim for a constructive trust is rejected for the same reason the Church's request for such a trust is denied. Deleo's petition is denied.

F. Remaining Petitioners

To the extent that other petitions remain pending, such as that of Jeri Coppa-Knudson as bankruptcy trustee, those petitions are denied. Other than those detailed here, no other petitioners presented evidence in support of their claims.

G. Summary

During these proceedings, the Court witnessed a diverse, colorful array of individuals. For the most part, the Petitioners have little or nothing in

common. Two of them are the children of Paul Monea, the man convicted of using the diamond in his money laundering scheme. One is a man in his seventies who has made his wealth through a clay company. Still another is a reverend that practices martial arts. However, there is little question that at least a portion of the Petitioners were duped by Paul Monea. There is no avoiding the fact that Deleo was an honest businessman who lost more than $500,000 due to Monea's actions. Likewise, there is little dispute that Reverend Moore put in a significant amount of time and effort on behalf of himself and his Church in an effort to market the diamond. For that matter, there is no indication that Brooke and Blake Monea were involved in or even aware of their father's criminal activities. As such, in another setting, each of the Petitioners would likely have a valid cause of action against Paul Monea. The facts, however, did not support any of the Petitioners' claims that they had an interest in the diamond superior to that of the Government.

It is undisputed from the record that the diamond was used as a part of Paul Monea's money laundering scheme. As no Petitioner has established an interest superior to that of the Government, the Court hereby orders that the diamond is forfeited to the Government.

IV. Conclusion

The petitions of the Monea Family Trust I, Brooke Monea, Blake Monea, Jeri Coppa-Knudson, Gerald K. Deleo, Corona Clay Company, Charity Fellowship of Truth Church, and Reverend David

Moore are DENIED. The Government's interest in the diamond is found to be superior to that of each of the Petitioners.

IT IS SO ORDERED.

Dated: May 11, 2009 /s/ John R. Adams
JUDGE JOHN R. ADAMS
United States District Judge

APPENDIX E

21 U.S.C.A. § 853

(a) Property subject to criminal forfeiture

Any person convicted of a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law--

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 848 of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter or subchapter II of this chapter, that the person

forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Meaning of term "property"

Property subject to criminal forfeiture under this section includes--

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) Third party transfers

All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (n) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d) Rebuttable presumption

There is a rebuttable presumption at trial that any property of a person convicted of a felony under this subchapter or subchapter II of this chapter is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that--

(1) such property was acquired by such person during the period of the violation of this subchapter or subchapter II of this chapter or within a reasonable time after such period; and

(2) there was no likely source for such property other than the violation of this subchapter or subchapter II of this chapter.

(e) Protective orders

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section--

(A) upon the filing of an indictment or information charging a violation of this subchapter or subchapter II of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that--

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for

forfeiture. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(4) Order to repatriate and deposit

(A) In general

Pursuant to its authority to enter a pretrial restraining order under this section, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

(B) Failure to comply

Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p) of this section, shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement

of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.

(f) Warrant of seizure

The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (e) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

(g) Execution

Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are

necessary to protect the interests of the United States or third parties.

(h) Disposition of property

Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

(i) Authority of the Attorney General

With respect to property ordered forfeited under this section, the Attorney General is authorized to--

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this subchapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, in accordance with the provisions of section 881(e) of this title, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(j) Applicability of civil forfeiture provisions

Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 881(d) of this title shall apply to a criminal forfeiture under this section.

(k) Bar on intervention

Except as provided in subsection (n) of this section, no party claiming an interest in property subject to forfeiture under this section may--

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his

alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(l) Jurisdiction to enter orders

The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(m) Depositions

In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(n) Third party interests

(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any

other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that--

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(o) Construction

The provisions of this section shall be liberally construed to effectuate its remedial purposes.

(p) Forfeiture of substitute property

(1) In general

Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant--

(A) cannot be located upon the exercise of due diligence;

(B) has been transferred or sold to, or deposited with, a third party;

(C) has been placed beyond the jurisdiction of the court;

(D) has been substantially diminished in value; or

(E) has been commingled with other property which cannot be divided without difficulty.

(2) Substitute property

In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

(3) Return of property to jurisdiction

In the case of property described in paragraph (1)(C), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.

(q) Restitution for cleanup of clandestine laboratory sites

The court, when sentencing a defendant convicted of an offense under this subchapter or subchapter II of this chapter involving the manufacture, the possession, or the possession with intent to distribute, of amphetamine or methamphetamine, shall--

(1) order restitution as provided in sections 3612 and 3664 of Title 18;

(2) order the defendant to reimburse the United States, the State or local government concerned, or both the United States and the State or local government concerned for the costs incurred by the United States or the State or local government concerned, as the case may be, for the cleanup associated with the manufacture of amphetamine or methamphetamine by the defendant, or on premises or in property that the defendant owns, resides, or does business in; and

(3) order restitution to any person injured as a result of the offense as provided in section 3663A of Title 18.